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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS MARQUES ESTRADA,

Defendant and Appellant.

D052484

(Super. Ct. No. SCD199913)

APPEAL from a judgment of the Superior Court of San Diego County, Melinda J. Lasater, Judge. Affirmed.

A jury convicted Carlos Marques Estrada of battery with serious bodily injury (Pen. Code, § 243, subd. (d))¹ and assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)). The jury also found true allegations Estrada personally inflicted great bodily injury on a nonaccomplice. (§§ 12022.7, subd. (a), 1192.7, subd. (c)(8).) The trial court sentenced Estrada to five years in state prison.

¹ All statutory references are to the Penal Code unless otherwise stated.

On appeal, Estrada argues his due process rights were violated because the jury was not fair and impartial. Alternatively, he argues the trial court erred in denying his petition for disclosure of Juror No. 1's identifying information. We affirm the judgment.

I

After the jury returned its verdict,² the prosecutor and defense counsel spoke with the jurors outside the courtroom. Juror No. 1 immediately approached the prosecutor and asked him if he knew two people who worked in the district attorney's office. The prosecutor did not know or recognize the name of the first person. The prosecutor knew the second person and "cross[ed] paths with him from time to time," but did not work directly with him and did not cross paths with him during the trial. Juror No. 1 did not state how she became acquainted with the second person or how well she knew him. She commented that he was a nice guy to which the prosecutor agreed. She also indicated she wanted to become a district attorney herself.

Stunned by Juror No. 1's remarks, defense counsel petitioned for access to the Juror No. 1's identifying information.³ Defense counsel argued that her decision to allow Juror No. 1 to remain on the jury would have been greatly impacted by knowing Juror No. 1 was acquainted with someone who worked in the district attorney's office and had

² We have omitted a summary of the facts underlying Estrada's conviction as they are not relevant to the issues on appeal.

³ Defense counsel also petitioned for the other jurors' identifying information; however, only Juror No. 1's identifying information is at issue in this appeal.

plans to become a district attorney. Defense counsel also expressed concern that Juror No. 1 may have tainted the deliberations by acting as an advocate for the prosecution.

Before ruling on defense counsel's petition, the trial court reviewed a transcript of Juror No. 1's voir dire with both parties. In an apparent response to a question about her acquaintances in the law or law enforcement professions,⁴ Juror No. 1 stated, "My aunt is a lawyer. I do believe it is environmental law. My grandfather used to be a sheriff for Orange County. One of my close professors and mentors works for the [D]epartment of [D]efense, and his son is a district attorney." The court inquired whether Juror No. 1 had ever discussed cases, legal principles, or war stories with any of these people and she replied, "With my professor war story and his son has given lectures about law cases but never anything specific." The court then inquired whether these exchanges would affect how Juror No. 1 would look at evidence as a trial juror and she replied, "No." The court further inquired whether Juror No. 1 could "use the mental gymnastics to separate out the information that they give you in those conversations" and she replied, "Yes." Finally, the court asked if Juror No. 1 had any additional information and she replied, "No." Nothing in the record indicates either counsel asked Juror No. 1 any follow-up questions.

Based on the transcript, the trial court denied the petition, finding Juror No. 1 had not committed misconduct because she had disclosed during voir dire that she was acquainted with someone in the district attorney's office. In addition, the trial court found

⁴ The record does not indicate the specific question asked of Juror No. 1.

Juror No. 1's failure to disclose her desire to become a district attorney, assuming she had the desire before the trial and did not develop it as a result of the trial, was not improper.

II

Estrada contends Juror No. 1's concealment of her relationships with employees of the district attorney's office and her desire to be a district attorney deprived him of a fair and impartial jury. We find no merit to this contention.

A juror who conceals relevant facts or gives false answers during voir dire undermines the jury selection process and commits misconduct. (*In re Hitchings* (1993) 6 Cal.4th 97, 111-112.) Although juror misconduct raises a presumption of prejudice, the presumption is rebutted and the verdict will not be disturbed if an examination of the entire record, including the nature of the misconduct and the surrounding circumstances, indicates there is no substantial likelihood that one or more jurors were actually biased against the defendant. (*In re Hamilton* (1999) 20 Cal.4th 273, 296; *In re Hitchings*, *supra*, 6 Cal.4th at p. 119; see also *People v. Carter* (2005) 36 Cal.4th 1114, 1208.)

Here, the record does not show Juror No. 1 committed misconduct by concealing relevant facts or giving false responses during voir dire. Regarding her future career plans, the record does not show she was asked a voir dire question requiring her to reveal them. Regarding her acquaintances in the law and law enforcement professions, the record does not show the specific voir dire question asked of her; however, the record clearly shows she disclosed being acquainted with an attorney in the district attorney's office. She also disclosed that this person was the son of a close professor and mentor and that this person gave law-related lectures, which she had apparently attended. While

Juror No. 1 did not disclose her acquaintance with another employee of the district attorney's office, we cannot conclude on this record that her failure to do so was improper.

Even assuming Juror No. 1 was required to disclose the other acquaintance during voir dire, the record does not show there is a reasonable probability Estrada was actually harmed by her failure to do so. Defense counsel knew from voir dire Juror No. 1 had attended lectures by one district attorney, was acquainted with him, and was closely acquainted with his father. Nothing in the record suggests defense counsel was prevented from inquiring further about these relationships or that defense counsel would have sought to remove Juror No. 1 from the jury simply because she had two acquaintances in the district attorney's office, rather than one.

Conversely, the record suggests defense counsel was greatly concerned about Juror No. 1's future career plans and feared, because of them, Juror No. 1 may have acted as a prosecutorial advocate in deliberations. However, as we noted previously, nothing in the record shows anyone asked Juror No. 1 a voir dire question requiring her to disclose her future career plans.

Moreover, a jury's impartiality may only be challenged with evidence of overt statements, events, or circumstances capable of sensory corroboration. (*In re Hamilton*, *supra*, 20 Cal.4th at p. 294.) In this case, defense counsel's fear that Juror No. 1 may have acted as a prosecutorial advocate during deliberations was not based on any verifiable statement, event, or circumstance relayed to defense counsel by any of the 10 jurors defense counsel spoke with outside the courtroom after the trial. Instead, defense

counsel's fear was based solely on her perception from the jurors' posttrial comments that their reasoning was illogical. A jury's mental processes, even if illogical, may not be used as evidence to challenge the jury's impartiality. (*Ibid.*; Evid. Code, § 1150, subd. (a); see also *People v. Danks* (2004) 32 Cal.4th 269, 301-302; *People v. Duran* (1996) 50 Cal.App.4th 103, 112-113.)

III

Alternatively, Estrada contends the trial court erred in denying his petition for disclosure of Juror No. 1's identifying information to enable counsel to further investigate Juror No. 1's potential bias. We also find no merit to this contention.

A defendant may "petition the court for access to personal juror identifying information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose." (Code. Civ. Proc., § 206, sub. (g).) The court may release the information upon a prima facie showing of good cause. (Code. Civ. Proc., § 237, subd. (b).) A prima facie showing of good cause is a showing sufficient to support a reasonable belief that jury misconduct occurred. (*People v. Jones* (1998) 17 Cal.4th 279, 317; *People v. Rhodes* (1989) 212 Cal.App.3d 541, 551-552.) We review a trial court's ruling denying a defendant's petition for juror identifying information for abuse of discretion. (*Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1097-1098; *People v. Santos* (2007) 147 Cal.App.4th 965, 978.)

Here, the trial court correctly determined Estrada did not provide the requisite good cause for disclosure of Juror No. 1's identifying information. As we previously

explained, the record does not show Juror No. 1 committed misconduct during voir dire because the record does not show Juror No. 1 was obliged to disclose both acquaintances working at the district attorney's office or her future career plans. In addition, defense counsel's only proffered evidence that Juror No. 1 potentially committed misconduct during deliberations were the jurors' comments to defense counsel about their mental processes. Such comments are not admissible to show misconduct. (Evid. Code, § 1150, subd. (a); see also *People v. Danks*, *supra*, 32 Cal.4th at pp. 301-302; *People v. Duran*, *supra*, 50 Cal.App.4th at pp. 112-113.) Even if the comments were admissible, the comments do not, in fact, show misconduct because, as described by defense counsel, the comments indicate the jurors had credibility concerns about both parties' witnesses. The comments do not indicate Juror No. 1 engaged in any prosecutorial advocacy. Accordingly, we conclude the trial court did not abuse its discretion in denying Estrada's petition for Juror No. 1's identifying information.

IV

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.